

Murphy Spadaro & Landon

ATTORNEYS

1011 CENTRE ROAD, SUITE 210
WILMINGTON, DELAWARE 19805

PHONE 302.472.8100

FAX 302.472.8135

302.472.8101

jspadaro@msllaw.com

September 20, 2005

BY ELECTRONIC FILING

The Honorable Kent A. Jordan
United States District Court
844 North King Street, Room 4209
Wilmington, DE 19801

**RE: Eames v. Nationwide Mut. Ins. Co.
C.A. No.: 04-CV-1324KAJ**

Dear Judge Jordan:

Consistent with the Court's instructions at the September 13, 2005 hearing, I write to propose candidates for Special Discovery Master.

For the reasons set forth below, we believe the best choice is Special Discovery Master Harvey Bernard Rubenstein. Master Rubenstein has been serving as an SDM in Delaware's Superior Court more or less continuously since 1989. His caseload has included some of the largest and most complex insurance disputes in that Court's history. For example, Master Rubenstein served as SDM in Liggett Group Inc v. Affiliated FM Ins. Co., C.A. No. 00C-01-207HDR (Del. Super. Ct.), a complex tobacco-related products coverage case. He served as SDM in North Am. Philips v. Aetna Cas. & Sur. Co., C.A. No. 89C-AU-99 (Del. Super. Ct.), in which roughly \$600 million in coverage was disputed for underlying environmental claims.¹ Master Rubenstein also served as SDM in the following complex insurance disputes:

- Unisys Corp. v. Royal Indem. Co., C.A. No. 99C-08-055JOH (Del. Super. Ct.), a \$35 million Y2K coverage dispute.
- E.I. duPont de Nemours & Co. v. Admiral Ins. Co., C.A. No. 89C-AU-99 (Del. Super. Ct.), an environmental coverage case in which the insured claimed damages of \$1 billion.
- Monsanto Co. v. Aetna Cas. & Sur. Co., C.A. No. 88C-JA-118 (Del. Super. Ct.), another environmental coverage dispute involving over eighty underlying waste sites.

¹ The North Am. Philips case concluded in a four-month jury trial, reportedly the longest civil jury trial in the Delaware Superior Court's history.

The Hon. Kent A. Jordan
September 20, 2005
Page 2

Master Rubenstein currently serves as SDM in a products-related coverage dispute, E.I. duPont de Nemours & Co. v. Allstate Ins. Co., C.A. No. 99C-12-253JTV (Del. Super. Ct.), in which the insured seeks recovery of roughly \$250 million in liability insurance proceeds.

In addition to this vast body of experience, Master Rubenstein also served as SDM in Phillips v. Nationwide Mut. Ins. Co., C.A. No. 97C-02-038VAB (Del. Super. Ct.), a bad-faith PIP case. Master Rubenstein is probably the only available candidate with actual experience as an SDM in a bad-faith PIP dispute.

Another factor that militates in favor of Master Rubenstein's appointment is cost. Cost is no small matter to the Eames plaintiffs, both because they are ordinary consumers of modest means, and because they have already spent substantial time and effort in their (thus far unsuccessful) effort to secure document discovery from Nationwide. Master Rubenstein, meanwhile, is widely known to discount the cost of his services as SDM dramatically. He does this, as he himself has explained, because he views his role as an SDM as service to the Court.

Yet another factor is speed. Because Master Rubenstein is semi-retired, he is generally available to hear oral argument within just days of the close of briefing; and he typically issues his written decision just days thereafter. His appointment would thus bring both speed and economy to the process.

Master Rubenstein's biography is doubtless known to the Court, including his past leadership of the Delaware State Bar Association, his active involvement with the American Bar Association and St. Thomas More Society, and his longstanding role as a mentor to junior lawyers. For my part, I have found that Master Rubenstein has a particular gift for easing tensions in high-stakes, contentious disputes. Under the circumstances, it is not too much to say that Master Rubenstein is an ideal candidate.

However, should the Court prefer another suitable candidate, such candidates are available. Our alternative candidates include the following:

- *James W. Semple of Morris James Hitchens & Williams LLP.* Mr. Semple has represented Nationwide in the past, which should give Nationwide some comfort. He has substantial experience in complex coverage issues and commercial litigation, and is a respected member of the Bar.

- *Keith E. Donovan of Morris James Hitchens & Williams LLP.* Mr. Donovan has extensive experience in insurance-related matters and PIP disputes. He, too, has represented Nationwide in the past.²

² The Eames plaintiffs waive any actual or potential conflict arising from the past attorney-client relationships involving Mr. Semple, Mr. Donovan and Nationwide.

The Hon. Kent A. Jordan
September 20, 2005
Page 3

- *The Honorable William T. Quillen of Drinker Biddle & Reath LLP.* Judge Quillen's reputation precedes him, and his qualifications are too many to list. Our only reservation regarding the possible appointment of Judge Quillen is the matter of cost.

- *The Honorable Vincent J. Poppiti of Blank Rome LLP.* Judge Poppiti's qualifications are likewise well known, and here again our only reservation is cost.

The question of who should be appointed SDM invites the related question of should not be so appointed. On that point, we submit that the integrity of the process should be preserved, both in fact and appearance. For this reason, we respectfully request that the Court avoid appointing any SDM who currently derives most or all of his income from the representation of auto insurers.

I am available to address any questions regarding this submission.

Respectfully,

/s/ John S. Spadaro

John S. Spadaro

JSS/slr

cc: Curtis P. Cheyney, III, Esq. (by electronic filing)

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE**

THOMAS A. EAMES, ROBERTA L. EAMES)	
and TAMMY EAMES, on behalf of)	
themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	C.A. No. 04-CV-1324KAJ
)	
v.)	
)	
NATIONWIDE MUTUAL INSURANCE)	
COMPANY,)	
)	
Defendant.)	

NOTICE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following:

Nicholas E. Skiles, Esq.
Swartz Campbell LLC
300 Delaware Avenue, Suite 1130
P.O. Box 330
Wilmington, DE 19899

MURPHY SPADARO & LANDON

/s/ John S. Spadaro
John S. Spadaro, No. 3155
1011 Centre Road, Suite 210
Wilmington, DE 19805
(302) 472-8100

Attorneys for plaintiffs
Thomas A. Eames, Roberta L. Eames and
Tammy Eames (on behalf of themselves and
all others similarly situated)

September 20, 2005